

December 5, 2014

Chris Fetfatzes

Re: Retail License with Transporter for Hire License

Dear Mr. Fetfatzes:

ISSUE: This is in response to your e-mail dated October 29, 2014, wherein you advise that you hold a retail license and you wish to offer delivery services, similar to that offered by Instacart, which holds a Transporter-for-Hire license. You note that Instacart delivers prepared foods and alcohol; you want to offer the same but the alcohol would be limited to malt or brewed beverages (“beer”). You understand that the actual sale or point of sale must take place on the licensed premises, that the sale of beer for off-premises consumption is limited to one hundred ninety-two (192) ounces per single sale, and that the delivery vehicle must be owned or leased by your company and operated by your employees. You request an advisory opinion regarding your application for a Transporter-for-Hire license.

Records of the Pennsylvania Liquor Control Board (“Board”) indicate that 738 MOC Inc. holds Eating Place Retail Dispenser License No. E-319 (LID 60801) for the premises at 700-738-42 South 11th Street, Philadelphia, Pennsylvania.

OPINION: As you know, retail licensees may only sell alcohol on the licensed portion of the premises. [47 P.S. §§ 1-102; 4-401(a); 4-492(3)-(4)]. Sales of beer for off-premises consumption must occur on the licensed premises. [47 P.S. § 4-492(2)].

A retail license does not authorize the license to deliver alcohol. If a retail licensee wants to deliver alcohol for off-premises consumption, the retail licensee must also acquire a transporter-for-hire license. Section 501 of the Liquor Code requires a license issued by the Board in order to transport-for-hire any alcoholic beverages

within the Commonwealth. [47 P.S. § 5-501].

As you appear to be aware, there are three (3) types of transporter-for-hire licenses issued by the Board. The transporter-for-hire Class A license authorizes the holder to engage in the commercial transportation of liquor, malt or brewed beverages or alcohol to or from points located in the Commonwealth. A transporter-for-hire Class B license allows the holder to engage in the commercial transportation of malt or brewed beverages only to or from points located in the Commonwealth. A transporter-for-hire Class C license is a fleet license that authorizes the holder to engage in the commercial transportation of liquor parcels within the Commonwealth. [40 Pa. Code § 9.11].

If you were to also obtain a transporter-for-hire license, customers who place an order for delivery would have to pay for that order by debit or credit card, just as they might while they are on the licensed premises. The sale of the alcohol must be completed on the licensed premises before delivery occurs. It would not be permissible for the customer to pay the delivery person in cash, for that would clearly be a sale occurring off of the licensed premises. Customers may tip the delivery person if they so choose, since tipping is optional and is not off-premises sale of alcohol.

A transporter-for-hire may not transport both malt or brewed beverages and a commodity that is hawked or peddled in the same vehicle at the same time. [40 Pa. Code § 9.92(b)]. This office has interpreted “hawked or peddled” to mean the attempt to sell a product from the delivery vehicle. The sale of goods must be completed prior to delivery, such that the only thing necessary to complete the sales transaction is the physical delivery.

Finally, please note that the transporter-for-hire licensee may only transport alcohol that it does not own, such as alcohol that a customer has purchased. If you obtain a transporter-for-hire license, you cannot use that licensed vehicle to pick up alcohol that the retail licensee has purchased from a beer distributor.

THIS OPINION APPLIES ONLY TO THE FACTUAL SITUATION DESCRIBED HEREIN AND DOES NOT INSULATE THE LICENSEE OR OTHERS FROM CONSEQUENCES OF CONDUCT OCCURRING PRIOR TO ITS ISSUANCE. THE PROPRIETY OF THE PROPOSED CONDUCT HAS BEEN ADDRESSED ONLY UNDER THE LIQUOR CODE AND

REGULATIONS. THE LAWS AND POLICIES ON WHICH THIS OPINION IS BASED ARE SUBJECT TO CHANGE BY THE LEGISLATURE OR THE PENNSYLVANIA LIQUOR CONTROL BOARD.

Very truly yours,

FAITH S. DIEHL
CHIEF COUNSEL

cc: Pennsylvania State Police,
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